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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

TRACY REXROAT, an Arizona resident,)	NO. 2:11-cv-01028-PGR
)	
Plaintiff,)	MOTION TO STRIKE MATERIALLY
)	FALSE DECLARATIONS OF JANET
vs.)	BRITE AND DEBBIE JACKSON
)	
ARIZONA DEPARTMENT OF)	and
EDUCATION; STATE OF ARIZONA,)	
STATE BOARD OF EDUCATION,)	TO HOLD JANET BRITE, DEBBIE
)	JACKSON AND ATTORNEY BACALZO
Defendants.)	IN CONTEMPT OF COURT (Rule 56(h))
)	
)	
)	
)	(Oral Argument Requested)
)	

MOTION TO STRIKE

Plaintiff Tracy Rexroat, by and through undersigned counsel, hereby respectfully moves to strike the materially false Declarations of Janet Brite and Attorney General employee Debbie Jackson, which were used to support Defendant's Statement of Facts [Doc. 83], pursuant to Rule 56(h), Federal Rules of Civil Procedure. These Declarations are materially false and are

1 clearly contraverted by Defendant's own prior statements, personnel documents, EEOC
2 documents, testimony and business cards. Plaintiff further moves to hold Janet Brite and
3 Attorney General employees Debbie Jackson and Attorney Rachel Bacalzo in contempt of
4 court for the presentation of these materially false declarations.

5
6 WHEREFORE, Plaintiff respectfully requests the materially false Declarations of Janet
7 Brite and Debbie Jackson be stricken, and Ms. Brite, Ms. Jackson, and Attorney Bacalzo be
8 held in contempt of Court for presentation of these false declarations to the Court. This Motion
9 is more fully supported by the below Memorandum of Points and Authorities, which by this
10 reference is incorporated herein.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13
14 In Defendant's recent Motion for Summary Judgment [Doc. 82] and supporting
15 Statement of Facts [Doc. 83], Defendant attempted to mislead the Court by withholding very
16 salient information and also made materially false statements to the Court under oath. While it
17 is understandable the Court would be skeptical that such an attack on the integrity of this Court
18 could be perpetuated by the State, Ms. Rexroat is confident the below discussion clearly
19 demonstrates the unequivocal material falsity of the Declarations.
20

21 To understand the materiality of the false statements, a discussion of what Defendant is
22 attempting to prove is constructive. The basic premise of Defendant's argument in this lawsuit
23 is three-fold. *First*, Defendant wants the Court to believe that State Supervisors (which
24 Plaintiff and her male comparators are) must have "considerable knowledge, education,
25 experience and training" in each of the several, wide-ranging areas they manage. Defendant

1 concludes that since Plaintiff does not have the “considerable knowledge, education, experience
2 and training” in the areas that her male comparators manage, then Defendant argues the work
3 performed is different. This conclusion is based upon the false Declaration of Janet Brite,
4 which is easily contraverted by reviewing Defendant’s own personnel documents showing that
5 no State Supervisor has knowledge, education, experience or training in the majority of areas
6 they supervise. **Second**, Defendant wants the Court to believe that certain male State
7 Supervisors are paid as low as Plaintiff and that certain female State Supervisors are paid as
8 much as the male comparators in this case. In attempting to make this showing, Defendant
9 presented false declarations that claim certain persons are State Supervisors when they are not
10 and never were. These persons were interns and CTSO advisors, which are very different than
11 State Supervisors. The falsity of the sworn statements is shown by the business cards and
12 personnel documents for these individuals. **Third**, Defendant presents Declarations swearing
13 under oath that a “special entrance rate” is an initial salary that is *any* salary between the low
14 point and mid-point of the salary range. Defendant parlays this false statement to make it
15 appear that Plaintiff received a “special entrance rate”. However, the sworn declarations are
16 unequivocally contraverted by Defendant’s EEOC Position Statement, its own personnel rules,
17 and its prior sworn testimony. A “special entrance rate” is a salary *above* the mid-point of the
18 salary range.
19
20
21

22 In addition, Ms. Brite made false statements to the Court in an attempt to convince the
23 Court that one of the male comparators, Jason Wojcik, has greater “responsibility” than
24 Plaintiff in this lawsuit by falsely stating that Jason Wojcik has a supervisory role. As the
25 Court is aware, one of the factors to determine whether Plaintiff and her male comparators

perform “equal work” is to examine whether they have similar responsibility. Ms. Brite falsely stated that Jason Wojcik has a supervisory role to make the Court believe he has greater responsibility. However, this false statement is contraverted Defendant’s own personnel documents unequivocally showing that Jason Wojcik did not supervise anyone.

II. FACTUAL BACKGROUND

A. False Statements Regarding “Special Entrance Rate” and “Special Recruitment Rate”

Debbie Jackson, who is a co-worker of Attorney Bacalzo at the Attorney General’s office (Doc. 83-13 at ¶2), signed her sworn Declaration in support of Defendant’s Motion for Summary Judgment. [Doc. 83-13]. In Paragraph 9 of the Declaration, Ms. Jackson defines a “special *recruitment* rate” as initial “salaries above the mid-point in the [salary] range.” Id. at ¶9. In Paragraph 10 of the Declaration, Ms. Jackson defines a “special *entrance* rate” as “any salary that is above the minimum, but not more than mid-point of the established salary range.” Id. at ¶10. In clearer terms, Ms. Jackson swore under oath that a “special *entrance* rate” is an initial salary between the low-point and mid-point of the salary range (0-50), and a “special *recruitment* rate” as any salary above the mid-point of the salary range (51-100).

The material falsity of these sworn statements is proven by Defendant’s own testimony and its prior statements. As a preliminary matter, a special *recruitment* rate does not exist. See e.g. Doc. 86-10 at 186:21-23 (*supervisor Janet Brite testifying that she has no knowledge of what a special recruitment rate is*). This is a concocted term used to justify Jason Wojcik’s, James Wojcik’s and Bruce Watkins’ significantly higher salaries. A special *entrance* rate is a salary that is above the mid-point of the salary range. It is not a salary below the mid-point as

1 Ms. Jackson falsely states under oath. Below is the evidence showing the unequivocal falsity
2 of the declarant's sworn statements:

3 In Defendant's EEOC Position Statement, it truthfully noted that:

4 The Personnel Rules permit a candidate to be *hired at a rate greater than the*
5 *midpoint of the range ("special entrance rate")* if justified by the applicant's
6 unusual and outstanding experience, education and ability, or based on the
7 availability of qualified applicants or the applicant's earning history. A.A.C. R2-
5-303(H).

8 See Exhibit 1 (Defendant EEOC Position Statement) (parentheses in original) (emphasis
9 supplied). As is shown by Defendant's prior statement, a "special entrance rate" is a rate
10 greater than the mid-point of the salary range, not below the mid-point as the declarant falsely
11 states.

12 Ms. Jackson's definition of a "special *entrance* rate" is also shown to be false by making
13 a reasonable inference based on Defendant's prior statement that "[w]ith his [Jason Wojcik's]
14 salary history ... a special entrance rate of \$58,500.00 was approved." Id. A special entrance
15 rate of \$58,500.00 is well above the mid-point of the \$36k-\$66k salary range for Mr. Wojcik's
16 position, which confirms that a special entrance rate is above the mid-point of the salary range.
17 Accordingly, Ms. Jackson's sworn statement is false.

18 In Ms. Jackson's zeal, she parlayed this false definition of a "special entrance rate" to
19 make it appear that Defendant preferably treated Ms. Rexroat by awarding her a "special
20 entrance rate". In Paragraph 18 of her Declaration, Ms. Jackson swears under oath that
21 Plaintiff was awarded a "special entrance rate", but this sworn statement is based upon Ms.
22 Jackson's false statement as to what a "special entrance rate" is.
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24
25

B. False Statements in Classifying Non-State Supervisors as State Supervisors

In an effort to make the Court believe that some male State Supervisors earned as less as Plaintiff and some female State Supervisors earned as much as Plaintiff's male comparators, Ms. Brite falsely testified that many State employees are State Supervisors. They are not as unequivocally demonstrated below.

In Paragraphs 24, 28-29, and 31-32 of her Declaration, Ms. Brite swears under oath that the following persons are State Supervisors: Sheri Cone, Ryan Hamilton, Scott Soldat, Oleg Schvets, and Tyler Grandil. These are false sworn statements. For example, Ryan Hamilton's business card expressly contravenes Ms. Brite's sworn statement, to wit:



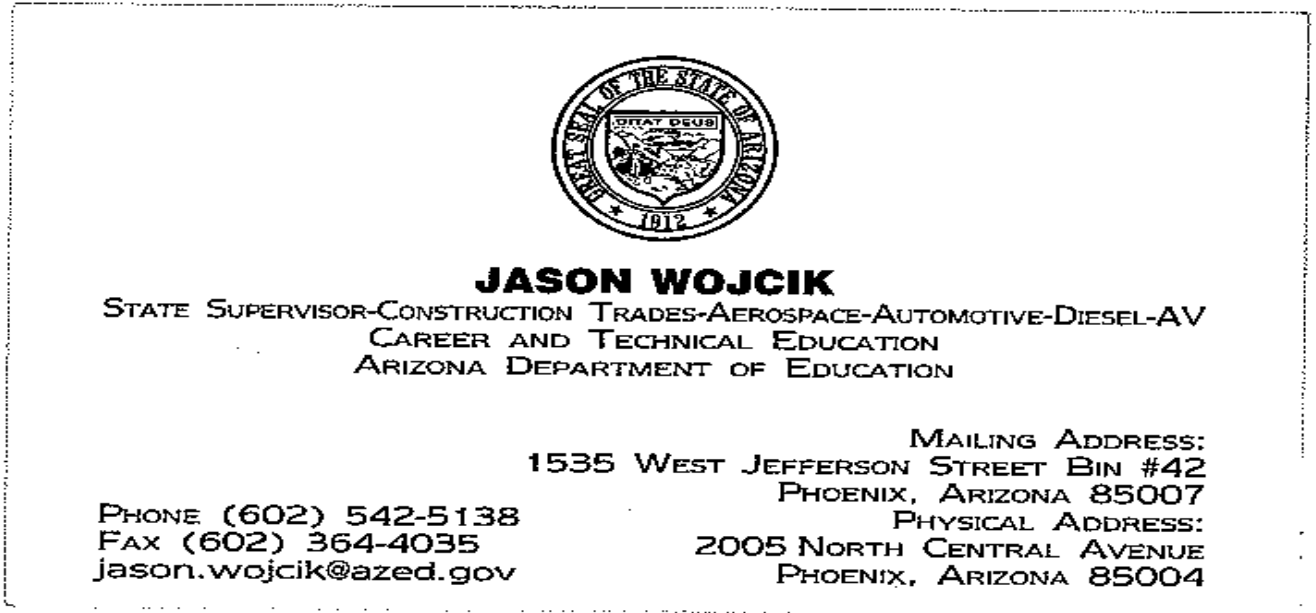
RYAN L. HAMILTON

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BUSINESS EDUCATION TEAM
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See Exhibit 2 (relevant business cards). This complicated business card simply means that Mr. Hamilton was a CTSO advisor, not a State Supervisor as the declarant falsely states under oath. See e.g. Doc. 91 at ¶23. The word "State Supervisor" is nowhere to be found on

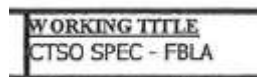
Mr. Hamilton's business card. If Mr. Hamilton was a State Supervisor as Ms. Brite falsely states, his business card would look like this:



Id. As is clear by Mr. Wojcik's business card, it unmistakably states he is a "State Supervisor". Mr. Hamilton's business card does not. Furthermore, Defendant's personnel documents show that Mr. Hamilton was actually an intern before he became a CTSO advisor, to wit:



See Exhibit 3 (relevant Personnel Action Forms). Mr. Hamilton was later promoted to the position of CTSO advisor, to wit:



Id. As is clear, Mr. Hamilton is not and never was a State Supervisor. The business cards and personnel documents for Sheri Cone, Tyler Grandil, Scott Soldat, and Oleg Schvets

1 similarly confirm the falsity of the declarant's sworn statements. Exhibit 2-3. For the sake of
 2 efficiency, a review of Exhibits 2 and 3 hereto unequivocally demonstrates the falsity of Ms.
 3 Brite's sworn statement. See also Doc. 91 at ¶¶22, 73(a)-(i).

4
 5 **C. False Statements Regarding "Knowledge, Education, Experience and Training"**

6 Defendant also bases a materially false statement on Ms. Brite's Declaration at
 7 Paragraph 28, to wit:

8 **28. Education Program Specialists who work in Career Pathways, particularly**
 9 **the State Supervisors, must have considerable knowledge, education, experience and**
 10 **training in the content areas of their assigned programs. Without that, the programs**
 11 **would suffer. As Career Pathways' Program Director, Jan Brite attempted to fill in**
 12 **temporarily for the Health Careers Education State Supervisor. Because Ms. Brite did**
 13 **not have a background in health care education, she was unable to perform the essential**
 14 **job duties of that position. Just to keep the programs afloat, Ms. Brite relied heavily on**

15 This statement goes to Defendant's equal "skill" argument in this lawsuit. In her zeal, the
 16 State's employee makes the fantastic statement that State Supervisors "must have considerable
 17 knowledge, education, experience and training in the content areas of their assigned programs." In a
 18 literal sense (as opposed to a facetious sense)...*unbelievable*. To ascertain the falsity of this statement,
 19 which is paramount to the Court's analysis of this motion and this case, a review of the State
 20 Supervisors' "assigned programs" and their actual knowledge, education, experience and training is
 21 necessary. To avoid Defendant back-tracking on its false statements or massaging the truth as it has
 22 done in this action, the below review will be based on Defendant's own personnel documents.

23 According to Defendant's Doc. 83 Statement of Facts, Jason Wojcik oversees the following
 24 program areas: Air Transportation, Construction Technologies, Cabinet Making, Design Technologies,
 25 Architect, Mechanical Technologies, Electrical Technologies, Electrical and Power Transmission
 Technologies, Electrical Systems, Air Conditioning, Auto Body Repair, and Diesel Engine Repair.

1 Doc. 83 at ¶15. In accordance with Defendant's materially false statement, Mr. Wojcik must have
2 "considerable knowledge, education, experience and training" in each of these listed areas. A review of
3 Jason Wojcik's employment application, which was produced by Defendant, shows that he does not
4 have anywhere close to any knowledge, education, experience OR training in any of his assigned
5 programs. His sole experience and education is obtaining a two-year AA degree in general education,
6 an two-year AA degree in an undisclosed area of study from the Arizona Architectural Institute, and
7 working for one construction company and one HOA. See Exhibit 4 (Jason Wojcik employment
8 application); see also Doc. 86-10 at 200:15-17 ("He had considerable industry experience in both
9 drafting and in construction"). In her deposition, Ms. Brite confirms that Jason Wojcik does not have
10 any experience in automotive repair and several other areas that he oversees. See e.g. Id. at 200:19-21
11 (*Brite testifying that Jason Wojcik did not have any experience in automotive*); Id. at 200:25-201:5
12 (*Brite confirming Jason Wojcik's sole experience is in construction and drafting, and possibly*
13 *"experience with electrical"*). Accordingly, Jason Wojcik has no experience, much less "considerable
14 knowledge, education, experience and training", in Air Transportation, Cabinet Making, Design
15 Technologies, Mechanical Technologies, Electrical Technologies, Electrical and Power Transmission
16 Technologies, Electrical Systems, Air Conditioning, Auto Body Repair, and Diesel Engine Repair. Ms.
17 Brite's sworn statement is materially false and literally unbelievable.

18
19 As a State Supervisor, James Wojcik (one of the male comparators) oversaw Agriculture
20 Business Management, Fire Service, Law, Public Safety, Security and Welding Technologies. Doc. 83
21 at ¶27. Ms. Brite swears under oath that as a State Supervisor, James Wojcik must have "considerable
22 knowledge, education, experience and training" in each of these assigned programs. A review of James
23 Wojcik's employment application shows that he does not have *any* (much less considerable)
24 knowledge, education, experience **OR** training in Fire Service, Law, Public Safety, Security or Welding
25

Technologies. Exhibit 5 (James Wojcik employment application). Rather, James Wojcik's sole background is in agricultural education, and while this background is respectable, he lacks any background, much less "considerable knowledge, education, experience and training" in his several remaining assigned areas. Id. Ms. Brite's sworn statement is false.

D. Grossly Misleading Statement That Jason Wojcik Had a Supervisory Role

Ms. Brite swears under oath that "[i]n addition to their regularly-assigned responsibilities, the following State Supervisors have supervisory responsibilities: Stephanie Hahn, Ruth Kerr, Shea Padilla and Jason Wojcik." Doc. 83-1 at ¶40. Ms. Brite's sworn statement is contraverted by Defendant's own personnel documents, to wit:

<u>SUPERVISOR LINKS AND CODES</u>		<u>Please Attach An Updated Org Chart</u>
Will this position supervise?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

See Exhibit 6 (Jason Wojcik Personnel Action Form). In actuality, Jason Wojcik did not receive this "supervisory" role until 2011, which was well after his initial hire and which does not explain his higher salary prior to this alleged "supervisory" role.

III. ARGUMENT AND SUPPORTING LAW

If satisfied that an affidavit or declaration under this rule is submitted in bad faith ..., the court – after notice and a reasonable time to respond – may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Fed.R.Civ.P. 56(h). Rule 56(h) was formerly Rule 56(g). See Advisory Committee Notes ("Subdivision (h) carries forward subdivision (g) with three changes").

Here, Janet Brite's and Debbie Jackson's declarations were submitted in bad faith because they were false as proven by Defendant's own prior statements, documents and

1 testimony. The statements were materially false and presented to the Court in an attempt to
2 prove the elements of this lawsuit.

3 Ms. Brite swears under oath that each State Supervisor, including James Wojcik and
4 Jason Wojcik, must have “considerable knowledge, education, experience and training” in each
5 of the areas to which they are assigned, but the actual facts demonstrate that neither Wojcik
6 brother comes anywhere close to having a background in the wide-ranging areas they
7 supervise, much less “considerable knowledge, education, experience and training.” The
8 material falsity of Ms. Brite’s declaration in this respect is shown by the Wojciks’ employment
9 applications and Ms. Brite’s own deposition testimony. Accordingly, the Declarations should
10 be stricken from the record and Janet Brite, Debbie Jackson, and Attorney Bacalzo should be
11 held in contempt of court.
12
13

14 Ms. Jackson swears under oath that a “special entrance rate” is an initial salary below the
15 mid-point of the salary range and parlayed this false statement to make it appear that Ms.
16 Rexroat was given preferential treatment in receiving a “special entrance rate”. However, Ms.
17 Jackson’s sworn statement is false and contravened by Defendant’s own EEOC position
18 statement. Accordingly, the Declarations should be stricken from the record and Janet Brite,
19 Debbie Jackson and Attorney Bacalzo should be held in contempt of court.
20

21 Ms. Brite swears under oath that several State employees are State Supervisors in a
22 devious attempt to mislead the Court into believing some men earn as less as Ms. Rexroat and
23 some women earn as much as Ms. Rexroat’s male comparators. However, these State employees
24 are not and never were State Supervisors. Accordingly, the Declarations should be stricken from
25

1 the record and Janet Brite, Debbie Jackson and Attorney Bacalzo should be held in contempt of
2 Court.

3 These false sworn statements coupled with Attorney Bacalzo's attempt to suborn perjury
4 from a witness in this action call into question the veracity of any representations made by
5 Defendant and its employees.
6

7 **IV. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests the Declarations of Janet Brite
9 and Debbie Jackson be stricken, and Ms. Brite, Ms. Jackson and Attorney Bacalzo be held in
10 contempt of Court. For the Court's convenience, a proposed form of Order is attached.
11

12
13 RESPECTFULLY SUBMITTED this 5th day of October, 2012.

14
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